

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1544 of 1998

in

SPECIAL CIVIL APPLICATION No 3840 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? No
  2. To be referred to the Reporter or not? No :
  3. Whether Their Lordships wish to see the fair copy : YES  
of the judgement? No
  4. Whether this case involves a substantial question : YES  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No
  5. Whether it is to be circulated to the Civil Judge? No :

-----  
BHATERDEVI RAMNIVAS SANWALRAM

Versus

STATE OF GUJARAT

-----  
Appearance:

MS FALGUNI N KAYASTH for Appellant

MR.ST MEHTA, AGP for Respondents

-----  
CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of the Letters Patent, is directed against judgment dated September 15, 1997 rendered by the learned Single Judge, in Special Civil Application No. 3840/97, by which claim made by the appellant for family pension under the family pension scheme is rejected by the learned Single Judge on the ground that her husband had put in 3 years service and not 5 years service as required by family pension scheme dated January 1, 1972.

2. The appellant is widow of one Ramnivas Sanwalram. Deceased Ramnivas had joined service as a constable and was working at the relevant time under the Deputy Inspector General of Police, Reserve Police Force, Headquarter, Kutch - Bhuj, Gujarat. He died in harness on December 12, 1980 leaving behind him the appellant, 2 young daughters and mother. The deceased had in all put in total service of 3 years 10 months & 27 days as constable. The appellant made several representations to respondent no.2 to fix and pay her the family pension, as she had no source of income. According to the appellant, she was trying to procure meals by doing work of sewing and small labour. As the appellant was denied the benefit of family pension, she filed Civil Suit No. 245/87 in the Court of learned Sub-Judge, First Class, Mahendergarh (Haryana) claiming a declaration that she was entitled to receive family pension. The suit filed by her was dismissed by judgment and decree dated September 21, 1990. It was held by the learned Judge that the Court had no jurisdiction to try the suit and even on merits the appellant was not entitled to receive family pension, as her deceased husband had not put in minimum 5 years service as required by Para-2 of Government Resolution dated January 1, 1972. Against the said decree, the appellant preferred Civil Appeal No.264/92 in the Court of learned Additional District Judge, Narnaul (Haryana), but the appeal was also dismissed by judgment and order dated August 5, 1992. Feeling aggrieved by the first appellate decree, the appellant preferred Regular Second Appeal No. 983/93 in the High Court of Punjab and Haryana at Chandigarh, but the same was dismissed by judgment dated December 3, 1993. The judgment rendered by the High Court was challenged by the appellant before the Supreme Court by way of filing Special Leave Petition (Civil) No. 6939/94. Along with the Special Leave Petition, Writ Petition (Civil) No. 400/94 was also filed by the appellant under Article 32 of the Constitution before the Supreme Court claiming relief of family pension. The Supreme Court by order dated August 16, 1994 dismissed Special Leave Petition No. 6939/94; whereas Writ

Petition (Civil) No.400/94 which was filed by the appellant under Article 32 of the Constitution was dismissed by an order dated March 6, 1995. However, while dismissing Special Leave Petition No.6939/94, the Supreme Court directed the authorities to accord the benefit of family pension to the appellant, if other persons similarly situated were accorded the said benefit. After dismissal of Special Leave Petition by the Supreme Court, the appellant appealed to the Chief Secretary, Government of Gujarat to reconsider her case for grant of family pension in accordance with the order of the Supreme Court by making a representation dated September 12, 1994. The appellant had also sent a copy of the order of the Supreme Court along with her representation to the Chief Secretary, Government of Gujarat. However, neither any action was taken on the representation made by the appellant, nor the appellant was informed about any decision taken by the Chief Secretary, Government of Gujarat. Under the circumstances, the appellant served a notice dated January 8, 1995 to the respondents under section 80 of the Code of Civil Procedure, 1908. On receipt of the notice, Senior Accounts Officer of the Indian Audit and Account Department of State of Gujarat sent a reply dated February 9, 1995 to the appellant mentioning, inter-alia, that she was not entitled to receive family pension, as eligibility criteria as laid down in Government Resolution dated January 1, 1972 as confirmed in another Government Resolution dated May 11, 1990 was not satisfied. The appellant gave reply dated February 28, 1995 to the above-referred to communication and claimed benefit of family pension. As nothing was heard from the respondents, the appellant addressed a mercy petition on April 20, 1995 to Hon'ble the Chief Justice of Gujarat High Court and requested the Hon'ble the Chief Justice to direct the Government of Gujarat to grant her family pension. On receipt of mercy petition, Hon'ble the Chief Justice directed the Legal Aid Committee to do needful in the matter and accordingly, case papers of the appellant were entrusted to learned advocate practising in the High Court. After going through the papers, Special Civil Application No. 3840/97 was filed by the learned Counsel who was entrusted the case papers of the appellant and prayer was made to declare that Para-2 of G.R.No.FPS-1071-J, dated January 1, 1972 requiring that for family pension, the deceased employee should have put in atleast 5 years service, should be struck down being contrary to the principles enshrined under Articles 13, 14 & 21 read with Articles 38, 39 & 41 of the Constitution. In the petition, it was further prayed to issue a writ of mandamus directing the respondents to fix

and pay forthwith the family pension to the appellant with effect from December 12, 1980.

3. The learned Single Judge before whom the matter was placed for admission hearing, took the view that as per the requirement laid down in Government Resolution dated January 1, 1972, family pension was available only to the widow of government servant who had put in atleast 5 years service and as the deceased husband of the appellant had not put in 5 years service, she was not entitled to the benefit of family pension. In view of the above conclusion, the learned Single Judge rejected the petition summarily by judgment dated September 15, 1997.

4. Ms. Falguni Kayastha, learned Counsel for the appellant submitted that by Resolution No. NVT-1187-GOT-41-(iii)-P-1, dated July 31, 1987, the Government decided to allow family pension to the families of Government employees, who died in harness irrespective of their length of service and, therefore, the petition ought to have been allowed by the learned Single Judge. It was claimed that requirement of 5 years service was done away with by Government Resolution dated July 31, 1987 and to that extent, family pension scheme framed under Resolution dated January 1, 1972 stood modified and, therefore, the prayer made in the petition should be granted.

5. Mr. S.T.Mehta, learned A.G.P. pleaded that the case of the appellant does not fall within the purview of Resolution dated January 1, 1972 and, therefore, the just order passed by the learned Single Judge should not be interfered with by the Court in the present appeal.

6. We have heard the learned Counsel for the parties. We have also taken into consideration the different resolutions which were brought to our notice during the course of hearing of the appeal. The fact that the husband of the appellant was recruited as police constable and had put in total service of 3 years, 10 months & 20 days, is not in dispute. It is also not in dispute that he died in harness on December 12, 1980. By resolution dated January 1, 1972, Government introduced a Family Pension Scheme under the Revised Pension Rules, 1950. Clause (2) of the Resolution dated January 1, 1972 required that family pension under the scheme would be admissible in case of death of an employee while in service on or after June 1, 1971 provided the Government servant had completed a minimum period of five years of continuous service on the date of death. Naturally, if

this resolution had not been subsequently amended, the appellant would not have been entitled to the benefit of family pension because her deceased husband had not completed a minimum period of 5 years of continuous service on the date of his death. However, by resolution No. NVT-1187-GOI-41-(iii)-P-1, dated July 31, 1987, the Government decided to allow family pension to the families of Government employees, who died in harness irrespective of their length of service. Thus, the requirement of 5 years service was done away with and to that extent family pension scheme framed under the Government Resolution dated January 1, 1972 stood modified by making pension scheme admissible to family members of those employees who had died while in service. Reference to Resolution No. NVT-1187-GOI-41-(iii)-P-1, dated July 31, 1987 is also to be found in reported decision rendered in Mankuvarba M. Vaghela v. Tharad Nagar Panchayat & Anr., 1992(1) GLR 375. In view of contents of Resolution dated July 31, 1987, we are of the opinion that the respondents were not justified in denying the benefit of family pension to the appellant. We may state that latter resolution dated July 31, 1987 was not brought to the notice of the learned Single Judge and, therefore, the petition filed by the appellant was not entertained. However, in view of resolution dated July 31, 1987, there is no manner of doubt that the appellant would be entitled to the benefit of family pension and, therefore, the original petition filed by the appellant will have to be accepted in part.

For the foregoing reasons, the appeal succeeds. The judgment dated September 15, 1997 rendered by the learned Single Judge in Special Civil Application No. 3840/97 is set aside. Special Civil Application No. 3840/97 partly succeeds. It is declared that the appellant is entitled to the benefit of family pension with effect from December 12, 1980. The respondents are directed to fix the family pension of the appellant and pay the same regularly to the appellant. The respondents are further directed to calculate and work out the arrears of family pension payable to the appellant under the scheme and pay arrears of pension to her as early as possible and preferably within three months from the date of receipt of the writ. The appeal is accordingly, allowed with costs all throughout.

\*\*\*\*

(patel)